

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

IN RE SYNGENTA ACTIONS

This Document Relates To:

Poletti et al. v. Syngenta AG et al.,
No. 3:15-cv-01221-DRH

Judge David R. Herndon

ORAL ARGUMENT REQUESTED

**SYNGENTA'S MOTION TO DISMISS
AND MOTION FOR ORAL ARGUMENT**

Defendants Syngenta AG, Syngenta Crop Protection AG, Syngenta Corporation, Syngenta Crop Protection, LLC, Syngenta Seeds, Inc. (now Syngenta Seeds, LLC) and Syngenta Biotechnology, Inc. (collectively, "Syngenta") hereby move for an order dismissing with prejudice the First Consolidated Amended Complaint, ECF No. 59, for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) and for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), and granting such further relief as the Court deems just and proper.

Syngenta also moves this Court pursuant to Fed. R. Evid. 201(c)(2) to take judicial notice of documents referenced in the Argument section of the Memorandum in Support and supporting exhibits attached to the Declaration of Michael J. Nester. Because these documents are either referred to in the complaints and central to Plaintiffs' claims, *see, e.g., Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993), or matters of government and public record, *see, e.g., Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 648 (7th Cir. 2011), they may be judicially noticed and are properly considered by this Court in deciding the Motion to

Dismiss, as more fully explained in the Memorandum in Support. *See Henson v. CSC Credit Servs*, 29 F.3d 280, 284 (7th Cir. 1994) (“The district court may also take judicial notice of matters of public record without converting a 12(b)(6) motion into a motion for summary judgment.”).

Syngenta respectfully requests oral argument on this Motion to Dismiss pursuant to Local Rule 7.1(h). Syngenta believes that oral argument will aid the Court because all of Plaintiffs’ claims are based on the unprecedented theory that it is somehow a tort under the laws of 33 States for a manufacturer to sell a U.S.-approved, safe, non-defective product—Syngenta’s genetically modified corn seed called Viptera—in the U.S. because China had not yet approved it for import. Plaintiffs, who are U.S. corn farmers that farm in 33 States, allege that their U.S. corn sells for lower prices in the U.S. because in November 2013, China temporarily refused to allow imports of corn containing Viptera into China and subsequently blocked all U.S. corn (before eventually approving Viptera for import). Plaintiffs have tried to fit this novel theory into the laws of 33 States by asserting numerous causes of action, such as negligence, private and public nuisance, strict liability for ultrahazardous activity, products liability, and tortious interference. Syngenta thus submits that oral argument would aid the Court in understanding the complex factual, regulatory, and legal background of this case.

Dated: April 18, 2016

Respectfully submitted,

/s/ Jordan M. Heinz

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CERTIFICATE OF SERVICE

I certify that on April 18, 2016, I electronically filed the foregoing document and any attachments with the Clerk of this Court by using the CM/ECF system, which will accomplish service through the Notice of Electronic Filing for parties and attorneys who are Filing Users.

Dated: April 18, 2016

/s/ Jordan Heinz

Jordan Heinz (ARDC #6286377)